

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CAUSE NO. 3:23-cv-345**

**PATTI RENA SMARR Administrator of the
Estate of BETTY JO DUNLAP MASON**

PLAINTIFF

v.

**PELICAN HEALTH AT CHARLOTTE, LLC
ACCORDIUS HEALTH, LLC, THE
PORTOPICCOLO GROUP, LLC, SIMCHA
HYMAN AND NAFTALI ZANZIPER**

DEFENDANTS

NOTICE OF REMOVAL

COME NOW, Defendants, Pelican Health at Charlotte, LLC d/b/a Pelican Health at Charlotte; Accordius Health, LLC; The Portopiccolo Group, LLC; Simcha Hyman and Naftali Zanziper, by and through counsel, and hereby give notice of removal of the above-entitled action, which is filed as Civil Action Number 23-CVS-7819 in the General Court of Justice, Superior Court Division of Mecklenburg County, North Carolina, from said Court to the United States District Court for the Western District of North Carolina. This Notice of Removal is filed pursuant to 28 U.S.C. §1332; 28 U.S.C. §1441; and 28 U.S.C. §1446.

CIVIL ACTION REMOVED

1. Civil Action Number 23-CVS-7819 in the General Court of Justice, Superior Court Division for Mecklenburg County, North Carolina, which is styled “*PATTI RENA SMARR, Administrator of the Estate of BETTY JO DUNLAP MASON v. PELICAN HEALTH AT CHARLOTTE LLC, ACCORDIUS HEALTH, LLC, THE PORTOPICCOLO GROUP, LLC, SIMCHA HYMAN and NAFTALI ZANZIPER*”, is a civil action that was filed on May 30, 2023.

DIVERSITY OF CITIZENSHIP

2. Under 28 U.S.C. §1332(a), diversity jurisdiction exists when a civil action is between citizens of different states and the amount in controversy exceeds \$75,000.00.

3. According to the Complaint, Plaintiff, Patti Rena Smarr, has been duly appointed Administrator of the Estate of Betty Jo Dunlap Mason. *See*, Complaint attached hereto as **Exhibit A**. However, the legal representative of the decedent shall be deemed to be a citizen only of the same state as the decedent. 28 U.S.C. § 1332. Thus, for the purposes of this Notice of Removal, Plaintiff is a resident of North Carolina.

4. Defendants Pelican Health at Charlotte, LLC, d/b/a Pelican Health at Charlotte (“Pelican Charlotte”); Accordius Health, LLC (“Accordius Health”); and The Portopiccolo Group, LLC (“Portopiccolo Group”) are limited liability companies. A limited liability company is a citizen of all states in which one of its members is a citizen. *See, Saxon Fibers, LLC v. Wood*, 118 Fed. Appx. 750, 753 (4th Cir. 2005) (citing *Gen. Tech. Application, Inc. v. Exro Ltda*, 388 F.3d 114, 120 (4th Cir. 2004)).

5. Defendant Pelican Health at Charlotte, LLC is a North Carolina Limited liability company. The company’s sole members are Naftali Zanziper, a resident of New York, and Simcha Hyman, a resident of New York. Therefore, Pelican Charlotte is a resident of New York.

6. Defendant Accordius Health, LLC is a New York limited liability company. Its sole members are Naftali Zanziper, a resident of New York, and Simcha Hyman, a resident of New York. Therefore, Accordius Health, LLC is a resident of New York.

7. Defendant The Portopiccolo Group, LLC is a New York limited liability company. Its sole members are Naftali Zanziper, a resident of New York, and Simcha Hyman, a resident of New York. Therefore, Portopiccolo Group is a resident of New York.

8. Defendants Naftali Zanziper and Simcha Hyman are both residents of New York.

9. As a result of the foregoing facts, complete diversity of citizenship exists between the parties as defined by 28 U.S.C. §(a)(1).

FACTS AND CONTROVERSY SUPPORTING JURISDICTIONAL AMOUNT

10. Plaintiff's Complaint alleges that Defendants are liable to Plaintiff under medical negligence and wrongful death claims resulting in personal injuries that were associated with the care provided to Ms. Betty Jo Mason and resulting in her death while she was a resident of Pelican Charlotte.

11. Plaintiff seeks compensation for alleged injuries that include compensatory damages under claims of medical negligence and wrongful death. *See* Exhibit A at pp. 3-4. Plaintiff claims as a result of Defendants' negligence, she is entitled to recover for damages far in excess of \$25,000.00 for decedent's personal injuries. Plaintiff also seeks compensatory damages for the wrongful death of decedent in an amount in excess of \$25,000.00 for the "medical care, funeral expenses, compensation for pain and suffering of decedent, the present monetary value of decedent to the persons entitled to received damages recovered, the net income of the decedent's services, protection, care, assistance, society, companionship, comfort, guidance and advice and such punitive damages for wrongfully causing the death of decedent." *Id.* Further, Plaintiff seeks to recover punitive damages in an amount in excess of \$25,000.00. *Id.* at 11.

12. Plaintiff seeks and has pled damages in excess of \$75,000.00, and this Court has diversity jurisdiction over this civil action pursuant to 28 U.S.C. §1332. Therefore, this action may be removed to this Court pursuant to 28 U.S.C. §1441.

TIMELINESS OF REMOVAL

13. Pelican Charlotte was served with process on May 12, 2023. Therefore, thirty days have not elapsed since the first Defendants were served with process or became aware of federal jurisdiction exists, and this removal is timely pursuant to 28 U.S.C. §1446(b).

COPIES OF STATE COURT PROCEEDINGS

14. Pursuant to 28 U.S.C. §1446(a), Defendants have requested and will attach hereto a true and correct copy of all process, pleadings, and orders served upon these Defendants on file in 23-CVS-7819 in the General Court of Justice, Superior Division for Mecklenburg County, North Carolina. *See* Certified Court Record (To Be Supplemented) and attached here to as **Exhibit B**.

NOTICE TO STATE COURT

15. Defendants will immediately file with the Superior Court of Mecklenburg County, North Carolina, a true and correct copy of this Notice, thereby effecting removal of this action to this Court. According to 28 U.S.C. §1446(d), no further proceedings shall be had in New Hanover County.

NOTICE TO PLAINTIFF

16. Pursuant to 28 U.S.C. §1446(a) and consistent with the Certificate of Service, Plaintiff is being provided with a copy of this Notice of Removal.

COMPLIANCE WITH FEDERAL RULE OF CIVIL PROCEDURE 7.1

15. Pursuant to Federal Rule of Civil Procedure 7.1, Defendants have filed separate Corporate Disclosure Statements.

Respectfully submitted this, the 12th day of June, 2023.

**PELICAN HEALTH AT CHARLOTTE, LLC,
ACCORDIUS HEALTH, LLC, THE**

**PORTOPICCOLO GROUP, SIMCHA
HYMAN, NAFTALI ZANZIPER, Defendants**

By: HAGWOOD AND TIPTON, PC

By: /s/ Michael E. Phillips
Michael E. Phillips (NCSB No. 45198)

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document on all of the parties to this cause by:

_____ Hand delivering a copy hereof to the attorney for each said party addressed as follows:

_____ Depositing a copy hereof, postage paid, in the United States Mail, addressed to the attorney for each said party as follows:

 X Via electronic mail addressed to the attorney for each party as follows:

_____ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:

_____ Telecopying a copy hereof to the attorney for each said party as follows:

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Attorneys for Plaintiff

This, the 12th day of June, 2023.

/s/ Michael E. Phillips
Michael E. Phillips